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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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NATIONSTAR MORTGAGE, LLC,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09 CH 24476
	)	
JEROME CHEETAM,	)	
	)	The Honorable
Defendant-Appellant.	)	Lisa A. Marino,
	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Fitzgerald Smith and Lavin concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the judgment of the circuit court of Cook County denying defendant's section 2-1401 petitions and deny defendant's request for sanctions where defendant failed to affirmatively impeach the process server's affidavit of personal service and his claim that the circuit court lacked subject matter jurisdiction is entirely without merit.

¶ 2 *Pro se* defendant, Jerome Cheetam, filed a notice of appeal after the circuit court of Cook County denied his section 2-1401 petitions raising jurisdictional challenges to the underlying mortgage foreclosure action.

¶ 3

**BACKGROUND**

¶ 4 On July 20, 2009, Aurora Loan Services, LLC, filed a mortgage foreclosure complaint against defendant concerning the mortgage and note executed in connection with defendant's condominium unit located at 7238 South Cornell Avenue in Chicago, Illinois. Aurora alleged that defendant had failed to pay "the monthly installments of principal, taxes, interest and insurance for 11/01/2008, through the present; the principal balance due on the Note and the Mortgage is \$200,000.000, plus interest, costs, advances and fees. Interest accrues pursuant to the note."

¶ 5 Among the exhibits attached to the complaint were the mortgage agreement, the adjustable rate promissory note that defendant executed and delivered to Boardwalk Financial in the principal amount of \$200,000, and the addendum to the adjustable rate rider, all dated March 6, 2007, and the assignment of the mortgage and note to Aurora Loan Services, LLC, dated June 22, 2009. The mortgage contains an acceleration clause in bold print stating:

"22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on

or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence."

The mortgage also contains a notice clause stating:

"15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. \*\*\* There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender."

The addendum to the adjustable rate rider amended Uniform Covenant 18 of the mortgage regarding the transfer of the property or beneficial interest in borrower, to read, in pertinent part:

"As used in this Section 18, 'interest in the Property' means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interest transferred

in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any [sic] part of the Property or interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. \*\*\*

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, lender may invoke any remedies by this Security Instrument without further notice or demand on Borrower."

¶ 6 In December 2010<sup>1</sup>, Aurora moved for entry of an order of default and judgment of foreclosure and sale against defendant, who was personally served with the foreclosure complaint and alias summons on October 2, 2010, and had failed to appear and answer. Aurora attached the affidavit of William Tobias, an agent of a licensed private detective agency that was appointed by the court to serve process. Tobias averred that he personally served defendant with alias summons and a copy of Aurora's complaint at 4:10 p.m., on October 2, 2010. Tobias included a physical description of defendant and specified that he served defendant at the back entrance of defendant's condominium unit. Tobias described the person process was left with as a "Black" male with black hair, approximately 45-50 years old, 6 feet tall, and 190 pounds.

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<sup>1</sup> Although Nationstar's brief states that Aurora filed the motion on December 14, 2009, the common law record includes the corresponding motion slip, which is file-stamped December 21, 2010.

¶ 7 One year later, on December 17, 2012, Aurora filed a motion to substitute Nationstar as party plaintiff based on Aurora's assignment of interest in the mortgage dated March 6, 2007, and executed by defendant, to Nationstar. On the same date, Nationstar filed its motion for entry of an order of default and judgment of foreclosure and sale against defendant.

¶ 8 On January 25, 2013, the circuit court entered an order substituting Nationstar as party plaintiff. The circuit court also entered an order of default and judgment of foreclosure and sale against defendant and an order dismissing unknown owners and nonrecord claimants. On March 27 2013, the Judicial Sales Corporation mailed a notice of sale by public auction on April 29, 2013, to defendant at the subject property address.

¶ 9 On April 5, 2013, defendant filed a *pro se* appearance identifying himself as the litigant but signing the appearance "Jerome Cheetam UCC-1-308 ALL RIGHTS RESERVED." He also filed a *pro se* answer alleging that because he was never properly served, he could not agree or disagree with Nationstar's claims until he received the notice of sale. Defendant added that before he received the notice of sale, there was some confusion as to who was pursuing the mortgage claim against him, that he still had a dispute with Aurora Bank, and he believed Nationstar was proceeding illegally. Defendant set forth these allegations using a preprinted form titled "Verified Answer to Complaint to Foreclose Mortgage," but he did not verify or sign the answer.

¶ 10 Defendant also filed a motion to vacate judgment alleging that he was denied due process due to insufficient notice, that on April 1, he first received notice of sale from the Judicial Sales Corporation alerting him that his condominium unit would be sold on April 29, and that this was a surprise because of the confusion as "there are two parties that say I owe them, and there are

extenuating circumstances that must be presented." The circuit court entered an order denying defendant's motion to vacate judgment on April 19, 2013.

¶ 11 Four days later, on April 23, defendant filed an emergency motion to dismiss due to lack of jurisdiction, "alerting the court that Nationstar LLC has no jurisdiction to move forward" with the sale of his condominium unit because in 2007, he entered into a mortgage contract with Aurora, and "that contract was terminated in 2010 through tender of payment by negotiable instrument." Notwithstanding the impending sale of his condominium unit in six days, defendant noticed his motion to dismiss for hearing in August.

¶ 12 At public auction on April 29, 2013, defendant's condominium unit was sold to Nationstar as the highest bidder. On May 7, 2013, Nationstar filed a motion for an order approving the report of sale and distribution and an order of possession. Nationstar scheduled the motion for a hearing on May 29, 2013.

¶ 13 On May 15, 2013, two weeks before the hearing on Nationstar's motion, defendant filed another motion to dismiss for lack of jurisdiction. In his motion to dismiss, defendant referenced the motion to dismiss that he filed on April 23, and added that the foreclosure action was a clear example of fraud and abuse. Defendant alleged that he entered into a "mortgage contract" with Aurora in 2007, and because that contract was terminated in 2010 "through tender of payment by negotiable instrument," Aurora "knowing they accepted the instrument could not move forward themselves," "had to find another company to pursue this issue." Defendant provided a May 29 hearing date on the notice of motion that was mailed to Nationstar.

¶ 14 On May 29, 2013, the circuit court entered a scheduling order on Nationstar's contested motion for an order approving sale and an order of possession, which was set for a hearing at 2 p.m. on August 29. The scheduling order provided that defendant should file a response to

Nationstar's motion, if any, by July 3, and that Nationstar should file a reply, if any, by August 7. The order also specified that hearing dates should not be changed except by court order, directed the parties' attention to the general standing orders of the Mortgage Foreclosure/Mechanics Lien Section, which govern all filings in this case, and warned that motions or briefs may be stricken for violation of the instant order. The order further indicated that defendant had "participated in the hearing in the manner contemplated by section 5/15-1505.6(a)<sup>2</sup> of the IMFL [Illinois Mortgage Foreclosure Law] and therefore must file certain motions no later than 60 days from the date of this order."

¶ 15 Defendant filed his third motion to dismiss for lack of subject matter jurisdiction on June 24, 2013. In his motion, defendant alleged that he tendered a negotiable instrument to Aurora in October 2010, and thereby discharged his indebtedness underlying the mortgage.

¶ 16 In August 2013, Nationstar filed a reply in support of its motion for an order approving sale. Nationstar argued that defendant waived his claim that Nationstar did not have "legal standing and cannot be acknowledged as a legitimate party of interest," because he failed to raise the lack of standing or subject matter jurisdiction prior to the entry of the default judgment. Nationstar added that defendant raised no other objections.

¶ 17 On August 29, 2013, the circuit court entered an order giving defendant until September 19 to file an amended motion to dismiss and to consult an attorney if he chose. Additionally, each party was given until October 17 to respond to the other's motion, and then until November

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<sup>2</sup> Section 15-1505.6(a) of the IMFL states: "In any residential foreclosure action, the deadline for filing a motion to dismiss the entire proceeding or to quash service of process that objects to the court's jurisdiction over the person, unless extended by the court for good cause shown, is 60 days after the earlier of these events: (i) the date that the moving party filed an appearance; or (ii) the date that the moving party participated in a hearing without filing an appearance." 735 ILCS 5/15-1505.6(a) (West 2012).

7 to reply to the other's motion. Both Nationstar's motion for approval of sale and defendant's motion to dismiss were continued to November 20.

¶ 18 On September 19, 2013, defendant filed his amended motion to dismiss with prejudice for lack of subject matter jurisdiction. In support, defendant attached the following: (1) a Uniform Commercial Code (UCC) financing statement and addendum identifying "Jerome Cornelius Cheetam" as both the debtor and the secured party; (2) a nonnegotiable security agreement, entered into on August 11, 2008, between "CHEETAM, CORNELIUS JEROME ©" as the debtor and "Jerome Cornelius Cheetam ©" as "the living, breathing, flesh-and-blood man" and the secured party; and (3) a hold harmless and indemnity agreement, also entered into on August 11, 2008, between "CHEETAM, JEROME CORNELIUS ©" as the debtor and "Jerome Cornelius Cheetam" as the creditor.<sup>3</sup> Additionally, defendant cited, but did not attach, a domestic return receipt from the United States Postal Service, which purportedly "bears witness to the fact that the negotiable instrument that was issued October of 2010 reached the chief financial officer for Aurora \*\*\* and proves acceptance of that instrument." According to defendant, "each document exhibited has its own function in reaching the goal of a perfected security interest. This security interest is a interest in property that secures payment, and performance of an obligation and is the UCC equivalent of a statutory lien. This security interest has attached and was enforced against the collateral in October of 2010."

¶ 19 On October 17, 2013, Nationstar filed its response to defendant's amended motion to dismiss. Nationstar argued that defendant's motion to dismiss should be denied as untimely and legally insufficient. On November 7, 2013, defendant replied that although his original motion to dismiss was not filed until April 23, 2013, subject matter jurisdiction could be challenged at

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<sup>3</sup> The copyright symbol, ©, is as it appears in defendant's pleadings and not a typographical error caused by the auto-correct function in the software program used to draft this order.

any time. He added that the supporting documents attached to his amended motion to dismiss were self-authenticating, or otherwise signed and notarized.

¶ 20 On November 20, 2013, the circuit court entered an order denying defendant's amended motion to dismiss and granting Nationstar's motion for approval of sale by separate order. The separate order approving the report of sale and distribution, confirming sale and order of possession provided, in pertinent part: (1) that all notices were properly given; (2) that justice was done; and (3) that an *in personam* deficiency judgment in the amount of \$59,450.78 with interest be entered against defendant. The circuit court also entered a memorandum of judgment in that amount in favor of Nationstar.

¶ 21 A deed was executed in favor of Nationstar on December 5, 2013, and recorded on December 23, 2013.<sup>4</sup>

¶ 22 On December 18, 2013, defendant filed a motion to vacate default judgment pursuant to section 2-1301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301 (West 2012)). Defendant stated that he had a meritorious defense to the foreclosure action because Aurora failed to "comply" with section 15-1208<sup>5</sup> of the IMFL (735 ILCS 5/15-1208 (West 2012)), which sets forth the definition of a mortgagee. Defendant explained that Aurora should have known that it lacked the capacity of a mortgagee to bring the mortgage foreclosure. Defendant alleged that Aurora manufactured a document purportedly assigning and transferring all interests and rights under the mortgage to Nationstar, who was a nonrecord claimant prior to the assignment of

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<sup>4</sup> We take judicial notice of "the on-line records of the Cook County recorder of deeds, of which we can take judicial notice." *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶ 4 n.1.

<sup>5</sup> Section 15-1208 of the IMFL defines "mortgagee" as (1) "the holder of an indebtedness or obligee of a nonmonetary obligation secured by a mortgage or any person designated or authorized to act on behalf of such holder" and (2) "any person claiming through a mortgagee as successor." 735 ILCS 5/15-1208 (West 2012).

mortgage. As an affirmative defense, defendant denied the validity and applicability of Aurora's assignment of mortgage to Nationstar and demanded strict proof thereof. Defendant also asserted that the assignment of mortgage "is either void or voidable in point of law." Defendant asked the court to vacate the January 25, 2013, order substituting Nationstar as party plaintiff and the November 20, 2013, order approving the report of sale and distribution, confirming sale and order of possession.

¶ 23 The next day, on December 19, 2013, defendant filed an emergency motion to stay the order of possession pending a ruling on his motion to vacate default judgment, which he noticed for a hearing in May 2014. The circuit court denied defendant's motion on December 23, 2013.

¶ 24 On May 5, 2014, the circuit court entered an order striking defendant's section 2-1301 motion to vacate default judgment. The circuit court also indicated on the order that defendant's section 2-1301 motion could not be treated as a section 2-1401 petition because it was not properly served.

¶ 25 On June 23, 2014, defendant filed a petition to vacate pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2012)). In his petition, defendant asserted that the November 20, 2013, judgment was void and should be vacated because "(a) Secured Party has a perfected security interest that's been attached since September 11, 2008, which enabled defendant to enforce the mortgage through his Secured Party Non judicially [*sic*], (b) This purported debt was DISCHARGED by negotiable instrument, (c) Defendant was never properly served, therefore there is objection to personal jurisdiction, (d) Nationstar LLC have been [*sic*] barred and terminated because they (through their attorneys Codilis & Associates[]) are non-record claimants and attempted standing through manufactured documents and invalid assignment."

Defendant further stated that he was diligent in pursuing his defense because he only learned of the foreclosure action when his neighbor gave him a letter from the Judicial Sales Corporation.

¶ 26 On the same date, defendant also filed a petition to vacate final judgment, order of sale, and order of possession, pursuant to section 2-1401(f) of the Code (735 ILCS 5/2-1401(f) (West 2012)). Defendant, again, asserted that the November 20, 2013, judgment was void where the purported debt was discharged. Defendant also asserted that the court lacked personal jurisdiction because he was never properly served. Defendant attached an affidavit of nonjudicial enforcement of mortgage wherein he stated that there was a default between himself and "his Secured Party," who "seized the property known as 7238 S. Cornell from Jerome Cheetam and any other party that claimed a [sic] interest." Defendant also attached an affidavit regarding the insufficiency of summons or service wherein he stated that he was never served with process.

¶ 27 The circuit court entered an order dismissing both section 2-1401 petitions on October 14, 2014, and defendant filed a notice of appeal on October 16, 2014. In the notice of appeal, defendant specified the order being appealed from as the order entered on November 20, 2013, and the relief sought was to "stay judgments pending appeal/reverse judgments of the circuit court."

¶ 28 ANALYSIS

¶ 29 As a threshold matter, we first address Nationstar's claim that we lack jurisdiction to review the November 20, 2013, order because defendant did not file a timely notice of appeal from that final order.

¶ 30 The filing of a timely notice of appeal is mandatory and jurisdictional. *Won v. Grant Park 2, LLC*, 2013 IL App (1st) 122523, ¶ 20. Illinois Supreme Court Rule 303(a)(1) (eff. Jan.

1, 2015) provides that a notice of appeal must be filed within 30 days after entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order. In a foreclosure case, the order confirming the sale, as opposed to the judgment of foreclosure, is the final and appealable order. *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 11. Strict compliance with the supreme court rules governing the deadlines for filing a notice of appeal is required, and when an appeal is untimely, we have no discretion to act other than to dismiss the appeal. *Won*, 2013 IL App (1st) 122523, ¶ 20.

¶ 31 Here, defendant did not file an appeal challenging the November 20, 2013, final order confirming the sale of his condominium unit within the 30-day period required by Rule 303(a)(1). *U.S. Bank National Association v. Prabhakaran*, 2013 IL App (1st) 111224, ¶ 28; see *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 11 (the order confirming the sale serves as the final and appealable order in a foreclosure action). Rather, defendant's notice of appeal, filed on October 16, 2014, was untimely as an appeal from the November 20, 2013, order, even if the 30-day period was tolled by the consideration of defendant's section 2-1301 petition to vacate. *JPMorgan Chase, N.A. v. Ontiveros*, 2015 IL App (2d) 140145, ¶ 16.

¶ 32 Notwithstanding, Illinois Supreme Court Rule 304(b)(3) (eff. Feb. 26, 2010), provides that a judgment or order that grants or denies any of the relief sought in a section 2-1401 petition is immediately reviewable. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002). Here, defendant's notice of appeal, filed two days after the circuit court denied his section 2-1401 petitions, is sufficient to confer jurisdiction on this court to review that denial. *JPMorgan Chase Bank, N.A. v. Ivanov*, 2014 IL App (1st) 133553, ¶ 41; see *People v. Smith*, 228 Ill. 2d 95, 104 (2008) (a notice of appeal is to be construed liberally), and *cf. Kemp*, 2012 IL

113419, ¶ 13 ("Had the motion to vacate been properly brought under section 2-1401, Rule 304(b) would have conferred appellate jurisdiction."). Nationstar recognizes as much in its appellate brief, acknowledging that "the appeal from [the] denial of the section 2-1401 petitions was timely," but contending that defendant waived such review, which is also barred by section 15-1509(c) of the IMFL (735 ILCS 5/15-1509(c) (West 2010)).

¶ 33 Nationstar argues that defendant waived the right to contest the denial of his section 2-1401 petitions by not specifically challenging that ruling in his argument on appeal and because section 2-1401 petitions are barred by section 15-1509(c). Defendant responds in his reply brief that a judgment entered without proper subject matter and personal jurisdiction is void and may be attacked at any time.

¶ 34 Generally, a section 2-1401 petition must demonstrate the existence of a meritorious defense to the underlying action and due diligence in bringing the petition. *Bank of America, N.A. v. Kulesza*, 2014 IL App (1st) 132075, ¶ 13. However, the general rules for filing a section 2-1401 petition are inapplicable to petitions challenging a judgment on voidness grounds. *Id.* (citing *Sarkissian*, 201 Ill. 2d at 104). It is well-established that "[a] judgment, order or decree entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void, and may be attacked at any time or in any court, either directly or collaterally." *Sarkissian*, 201 Ill. 2d at 103 (quoting *Barnard v. Michael*, 392 Ill. 130, 135 (1945)). Here, defendant asserted in his section 2-1401 petitions that the November 20, 2013, final order was void for lack of personal jurisdiction because he was never properly served. He also asserted that the November 20, 2013, final order was void for lack of subject matter jurisdiction because he discharged his indebtedness underlying the mortgage when he tendered a negotiable instrument to Aurora in October 2010.

We review *de novo* a judgment entered on a section 2-1401 petition requesting relief based on the allegation that the judgment is void. *Kulesza*, 2014 IL App (1st) 132075, ¶ 14.

¶ 35 Although Nationstar correctly notes that a section 2-1401 petition is generally barred by section 15-1509 of the IMFL after judicial confirmation of the sale of the property (*Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30 (2013)), we observe that "section 15-1509 applies only to valid judgments entered with jurisdiction over the parties and the subject matter" (*Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213, ¶ 15) and, accordingly, section 15-1509 does not bar defendant's jurisdictional challenge to the circuit court's judgment (*id.*).

¶ 36 To the extent that defendant challenges the circuit court's judgment based on a lack of personal and subject matter jurisdiction (*Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 11 (addressing the merits of defendants' appeal "so much as we can discern them from their briefs)), our *de novo* review leads us to conclude that the circuit court properly denied defendant's section 2-1401 petitions.

¶ 37 In determining whether the circuit court had personal jurisdiction over a defendant, we consider the entire record, especially the pleadings and the return of service. *Manley*, 2015 IL App (1st) 143089, ¶ 37. The affidavit of the process server is *prima facie* evidence of proper service and should not be set aside unless impeached by "clear and convincing evidence." *Id.* (quoting *Paul v. Ware*, 258 Ill. App. 3d 614, 617-18 (1994)). The uncorroborated account of the party served is not sufficient to set aside the *prima facie* evidence of proper service; instead, defendant needs affirmative evidence to impeach the affidavit of service. *Id.*

¶ 38 Here, the affidavit of the process server, William Tobias, described the person he served with the foreclosure complaint and alias summons as a "Black" male with black hair,

approximately 45-50 years old, 6 feet tall, and 190 pounds, and specified that he served defendant at the back entrance of defendant's condominium unit at 4:10 p.m., on October 2, 2010, as required by statute (735 ILCS 5/2-203(b) (West 2012)). *Manley*, 2015 IL App (1st) 143089, ¶ 38. Defendant's challenge to personal service consists solely of his uncorroborated assertion in his affidavit regarding the insufficiency of summons or service that he was never served with process. *Id.*, ¶ 39. Defendant failed to affirmatively impeach Tobias's affidavit of personal service by clear and convincing evidence; under these circumstances, we conclude that defendant was properly served and that the circuit court had personal jurisdiction over defendant. *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 25; *Ware*, 258 Ill. App. 3d at 618.

¶ 39 As to defendant's claim that the circuit court lacked subject matter jurisdiction because Nationstar lacked standing, we observe that "a claim for foreclosure is a justiciable matter regardless of whether the plaintiff bringing the action is a proper party." *Ontiveros*, 2015 IL App (2d) 140145, ¶ 22. Put another way, Nationstar's standing to bring the subject foreclosure action is not an element of subject matter jurisdiction. *Id.* (citing *Nationstar Mortgage, LLC v. Canale*, 2014 IL App (2d) 130676, ¶¶ 9-15).

¶ 40

#### CONCLUSION

¶ 41 For the reasons stated, we affirm the judgment of the circuit court of Cook County denying defendant's section 2-1401 petitions and deny defendant's request for sanctions.

¶ 42 Affirmed.